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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/308,770	10/28/1999	FRITZ SCHWERTFEGER	3259.81131	6628

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MARTHA ANN FINNEGAN  
CABOT CORPORATION  
BILLERICA TECHNICAL CENTER  
157 CONCORD ROAD  
BILLERICA, MA 01821-7001

EXAMINER

CROCKFORD, KIRSTEN ANNE

ART UNIT	PAPER NUMBER
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1762

DATE MAILED: 12/17/2001

19

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/308,770

Applicant(s)

SCHWERTFEGER

Examiner

Kirsten Crockford

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 November 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Detailed Action.

3. ☒ Applicant's reply has overcome the following rejection(s): The 35 USC 103(a) rejection over Burns et al. (5,750,610).
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Detailed Action.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-24.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. The proposed amendment will not be entered because it raises new issues that would require further consideration and/or search. Specifically, Applicant's proposed addition to claim 1, line 4, of "essentially free of water" is vague and indefinite because it is not clear whether Applicant means to claim that the lyogel introduced into the reactor is essentially free of water, or whether the washing step renders the lyogel essentially free of water.
2. It is noted that submitted English translation of the priority German patent application is sufficient to overcome the 35 USC 103(a) rejections over Burns et al. (5,750,610) since the priority date precedes the filing date of Burns et al.
3. With respect to the 35 USC 103(a) rejections over Lentz (3,122,520), Applicant argues that Lentz does not teach or suggest first washing an "organogel" essentially free of water with organic solvent and then surface-silylating the resulting lyogel with a disiloxane. Since Applicant later argues that "the method defined by the present claims uses organic solvent to remove the water in step (b) and disiloxane agent in step (c) for surface-silylating the water-free lyogel from step (b)", the arguments and proposed claim language are interpreted as requiring that the washing step renders the lyogel essentially free of water, not that the lyogel is essentially free of water prior to the washing step (see paragraph 1 above). It is noted that Lentz teaches in col. 3, lines 46-53, "a water immiscible organic solvent [is] present in sufficient amount to convert the hydrogel to an organogel." Lentz further states "That is the silica hydrogel can be first converted into an organogel by *replacement of the water with an organic solvent*" [emphasis added]. Therefore, it is the Examiner's position that the lyogel of Lentz is essentially free of

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water after the washing step, which Lentz teaches may occur prior to the addition of the organosilicon compound.

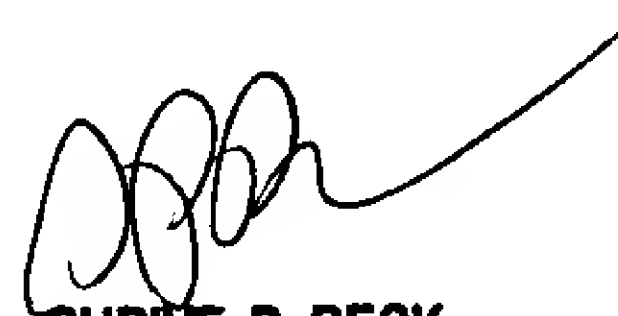
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kirsten Crockford whose telephone number is 703-306-5461. The examiner can normally be reached on Monday to Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive Beck can be reached on 703-308-2333. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1193.

kac

December 13, 2001



**SHRIVE P. BECK**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 1700**